



U.S.C. § 2241 and the savings clause of 28 U.S.C. § 2255(e) is available for a defendant whose sentence was increased based on a mandatory minimum term of imprisonment that Simmons established should not have been applied. After the Fourth Circuit heard oral argument en banc, Surratt's sentence was commuted, and the Fourth Circuit dismissed his appeal as moot.

Surratt sought a writ of certiorari from the Supreme Court, arguing that the Fourth Circuit erred when it dismissed Surratt's appeal as moot. Petitioner moved to hold this case in abeyance pending Surratt's certiorari petition, acknowledging that the outcome of Surratt's appeal would "directly impact the resolution of [Petitioner's] claims." The Supreme Court denied Surratt's petition on December 11, 2017.


Here, like Surratt's claim for sentencing relief, Petitioner's Simmons claim is moot because he is now serving a presidentially commuted sentence, not a judicially imposed sentence. See United States v. Surratt, 855 F.3d 218, 219 (4th Cir. 2017) (Wilkinson, J., concurring in the dismissal of Surratt's appeal as moot). This Court will, therefore, dismiss Petitioner's petition as moot.

**IT IS, THEREFORE, ORDERED that:**

1. The Government's Motion to Dismiss, (Doc. No. 22), is **GRANTED**, and this action is dismissed as moot.
2. The Clerk is directed to terminate the case.
3. Pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional

claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

Signed: February 26, 2018

  
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Frank D. Whitney  
Chief United States District Judge

